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11 UNITED STATES DISTRICT COURT  
12  
13 NORTHERN DISTRICT OF CALIFORNIA

14 THE CITY AND COUNTY OF SAN	)	Case No. 3:18-cv-07591-CRB
FRANCISCO, CALIFORNIA and THE	)	
15 PEOPLE OF THE STATE OF CALIFORNIA,	)	<b>JOINT STATUS UPDATE</b>
Acting by and through San Francisco City	)	
16 Attorney DAVID CHIU,	)	<b>Judges:</b> Hon. Charles R. Brever and
	)	Jacqueline Scott Corley
Plaintiffs,	)	
17	)	DATE: November 17, 2021
vs.	)	TIME: 9:00 a.m.
18	)	COURTROOM: Via Videoconference
PURDUE PHARMA L.P., et al.,	)	
19	)	
Defendants.	)	
20	)	

The parties respectfully submit this Joint Status Update in advance of the Court's discovery conference scheduled for November 17, 2021, at 9:00 a.m.

# **I. JOINT STATEMENT REGARDING SCHEDULE AND DISPUTE RESOLUTION**

## **A. Schedule**

On June 15, the Court entered the parties' Joint Stipulation and Amended Order to Modify the Case Schedule. Doc. 572. The specific dates are reflected in the chart below:

<b>Event</b>	<b>Current Schedule</b>
Custodial Productions Substantial Completion Deadline	June 4, 2021
Document Production Substantial Completion Deadline	June 21, 2021
Plaintiff's Expert Reports	October 5, 2021
Plaintiff's Endo and Walgreens Related Expert Reports	October 19, 2021
Close of Fact Discovery	November 12, 2021
Defendants' Expert Reports	December 2, 2021
Walgreens' two responsive reports for Drs. Park and McCann	December 9, 2021
Plaintiff's Expert Rebuttal Reports	December 23, 2021
Close of Expert Discovery	January 14, 2022
Motions for Summary Judgment and <i>Daubert</i> Motions	January 24, 2022
Oppositions to Motions for Summary Judgment and <i>Daubert</i> Motions	February 25, 2022
Replies in Support of Motions for Summary Judgment and <i>Daubert</i> Motions	March 11, 2022
All Trial Materials Due	March 24, 2022
Final Pretrial Conference	April 4, 2022
Trial	April 25, 2022

## **B. Update on Status of Settlement Among Stipulating Parties (Docs. 518-19, 562, 564, 570, 586, 616, 624, 647, 658, 661, 670)**

On January 26, 2021, the Court stayed the proceedings as to the Stipulating Defendants.<sup>1</sup>

<sup>1</sup> The Stipulating Defendants are distributors McKesson Corporation, AmerisourceBergen Drug Corporation and Cardinal Health, Inc.; and manufacturer Johnson & Johnson, its subsidiary Janssen Pharmaceuticals Inc. f/k/a Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. and its former affiliate Noramco, Inc. (with Plaintiff The People of the State of California, acting by and through San Francisco City Attorney David Chiu ("Plaintiff"), the "Stipulating Parties").

1 The Stipulating Parties will submit a further update to the Court on January 7, 2022.  
2 Doc. 670.

3 **C. Discovery Orders Issued Since Prior Conference (Docs. 725, 762)**

4 The Court issued two discovery order following the last hearing. One imposed deadlines for  
5 a number of productions and meet and confers. Doc. 725. The second granted Walgreens a one-  
6 week extension to respond to the expert reports of Drs. Elizabeth Park and Craig McCann.  
7 Doc. 762.

8 **D. Discovery Motions**

9 There are two fully briefed discovery disputes before the Court: (1) Walgreens' Motion to  
10 Quash Plaintiff's Depositions of two former Walgreens pharmacists and an Undisclosed Number of  
11 Future Additional Deponents (Doc. 763); and (2) Walgreens' Challenges to Plaintiff's Improper  
12 Privilege Claims (Doc. 766).

13 **E. Allergan Defendants' Motion for Leave to File First Amended Answer**  
14 **to Plaintiff's First Amended Complaint**

15 On October 25, 2021, the Allergan Defendants filed a motion for leave to file First Amended  
16 Answer to Plaintiff's First Amended Complaint. Doc. 702. Plaintiff opposed the motion on  
17 November 8, 2021. Doc. 744. Allergan replied on November 15, 2021. Doc. 765. Hearing is set  
18 before Judge Breyer on December 2, 2021.

19 **II. PLAINTIFF'S STATEMENT**

20 **A. Plaintiff's Document Production**

21 The sole remaining plaintiff in this action is the "the People of the State of California," acting  
22 by and through San Francisco City Attorney David Chiu. The direct claims brought by the City and  
23 County of San Francisco either were dismissed or have been stayed due to bankruptcy or settlement.  
24 *See, e.g., City & Cnty. of S.F. v. Purdue Pharma L.P.*, 491 F. Supp. 3d 610, 696 (N.D. Cal. 2020)  
25 (dismissing claims). Notwithstanding this fact, Plaintiff has produced more than four million pages  
26 of documents in this action producing records from more than 50 custodians. In addition, Plaintiff  
27 has produced massive databases of public health and other information reaching back to the 1990s,  
28 and has expanded its own production of custodians beyond what it initially agreed to produce.

1           Endo has said “temporal scope” of Plaintiff’s production is less than it should be. Endo has  
 2           stated that it relates to a changeover of email systems at the City and County of San Francisco that  
 3           began in 2011 and was completed in the relevant departments in 2014. Plaintiff conferred with  
 4           Endo’s new counsel on November 12, 2021 regarding the issues and the parties are set to meet again  
 5           on November 18 to follow up on the information Endo seeks about the changeover.

6           **B.       Privilege Issues**

7           The only remaining issue that touches upon any claim of privilege by Plaintiff is Walgreens’s  
 8           motion seeking *in camera* review of 12 documents based on California Code of Evidence §1157.

9           **C.       Defendants’ Depositions**

10           **1.       Plaintiff Objects to the Depositions of High-Ranking Officials**  
 11           **and Certain Topics of the Requested 30(b)(6) Testimony**

12           Based on the Court’s guidance, defendants have agreed to not pursue taking the depositions  
 13           of “apex” witnesses Dr. Grant Colfax (the Director of the Department of Public Health since January  
 14           2019); Sheriff Paul Miyamoto (Sheriff since January 2020); and Supervisor Matt Haney (assumed  
 15           office January 2019) pending the outcome of negotiations and motions on 30(b)(6) depositions.

16           Plaintiff and counsel for Endo were negotiating the resolution of a potential 30(b)(6)  
 17           deposition of the People of the State of California but Endo dropped out of the negotiations and  
 18           instead served Plaintiff with a joint discovery dispute letter that is currently pending. With regard to  
 19           just about every fact sought, Plaintiff has already disclosed experts in this action and served their  
 20           reports, or made detailed responses to interrogatories.

21           Plaintiff is still meeting and conferring with the Allergan/Actavis defendants with regard to  
 22           30(b)(6) notices served on the Office of the Mayor, the Board of Supervisors, the Office of the  
 23           District Attorney and the San Francisco Controller’s office. Plaintiff has informed those defendants  
 24           that it objects to much, if not all, of the testimony sought. Finally, Plaintiff is also meeting and  
 25           conferring with Walgreens regarding 30(b)(6) notices served on various entities regarding the City  
 26           and County’s pharmacy operations.

**D. Plaintiff's Responses to Defendants' Interrogatories**

On November 1, 2021, the parties engaged in a meet and confer during which Plaintiff agreed to supplement its responses to Interrogatory Nos. 17-18, and agreed to consider supplementing its responses to Interrogatory Nos. 26-27, 31, 33-37, and 41; Plaintiff agreed to do so within ten days. On November 8, defendants served a dispute letter regarding the aforementioned Interrogatories. On November 11, as agreed to by the parties, Plaintiff supplemented its Objections and Responses to Non-Stayed Manufacturer Defendants' Second and Third Set of Interrogatories, specifically for Interrogatory Nos. 17-18, 26-27, 31, 33-37, and 41. Plaintiff believes that defendants' dispute letter is now moot. If defendants find deficiencies with Plaintiff's supplemental responses, Plaintiff requests that defendants specifically identify them. Once defendants have done so, Plaintiff is willing to meet and confer.

**E. Ongoing Discussions Regarding Document Authentication and Admissibility**

On October 25, 2021, the People proposed two stipulations regarding (1) the authenticity and admissibility of documents produced in this and related matters and (2) the foundation for marketing materials produced by defendants. On November 12, 2021, Defendants provided a four-page letter of questions in response to Plaintiff's proposal but offered no alternative suggestion(s). Agreement has not been reached and discussions between the parties continue on this topic.

**F. Defendants' Discovery Deficiencies and Other Issues Requiring the Court's Attention**

**1. Walgreens**

**a. Walgreens Should Be Ordered to Schedule a Brief Inspection of the Computer System Its Pharmacists Use to Conduct and Document Due Diligence on Opioids Prescriptions**

Months ago, Plaintiff served a request to inspect the electronic system (called IC+) that Walgreens pharmacists use to conduct and record due diligence on opioid prescriptions. For obvious reasons, the way this program works is critically important. The Court's review of the expert opinion of Dr. Elizabeth Park confirms that. Plaintiff therefore requested a brief window (just a few hours) to probe the system (remotely, if more convenient), to figure out precisely how the pieces fit

1 together, how easy it is to pull up a patient’s prescription history, how a pharmacist locates relevant  
 2 third-party data, etc.

3 Walgreens has refused, claiming it has already produced documents and testimony describing  
 4 the system. That is true. Walgreens has produced screenshots of some of the system’s interface and  
 5 offered testimony on some of the system’s functionality. But that evidence is no substitute for an  
 6 opportunity to spend a couple of hours inspecting the pieces and how they fit together – a right  
 7 provided by Fed. R. Civ. P. 34. This is especially true given that, in other case tracks, Walgreens  
 8 sought to exclude expert testimony where the expert allegedly failed to account for nuances of  
 9 Walgreens’ computer systems. *In re Nat’l Prescription Opiate Litig.*, MDL No. 17-md-2804-DAP  
 10 (N.D. Ohio), Dkt. 3857-2 at 5 (“Malone apparently never attempted to ascertain what information  
 11 already is available to any Defendant’s pharmacists through existing [computer] systems. Nor does  
 12 he appear to have undertaken any effort to understand the technical specifications of any of those  
 13 systems in a way that would permit him to opine as to whether those systems should – or even could  
 14 – be altered in the ways he suggests.”).

15 Finally, in the months of meeting and conferring, Walgreens has not argued that conducting  
 16 such an inspection would be unduly burdensome. It would not be. As noted above, the inspection  
 17 would be short, could be conducted remotely, and likely would require little to no preparation  
 18 because Plaintiff would simply be inspecting the system “as-is.” Plaintiff therefore asks the Court to  
 19 order Walgreens to schedule a brief inspection of its pharmacy software.

20 **b. Walgreens Is Reneging on Its Rule 30(b)(6)**  
 21 **Commitments**

22 On October 6, Plaintiff sought Rule 30(b)(6) testimony from Walgreens on ten topics.  
 23 Approximately two weeks ago, Walgreens committed to addressing five topics through live  
 24 testimony, three by stipulation, and two through written answers. Then, on Friday night, Walgreens  
 25 changed course.

26 Walgreens now seeks significant limitations to the scope of the live testimony to which it  
 27 already agreed. Plaintiff sent a detailed response on Monday, and simply notes at this time that if  
 28 Walgreens persists in its belated efforts to backtrack from its agreement, Plaintiff will be compelled

1 to seek Court intervention. On the topics to be addressed by stipulation – namely, the consistency of  
 2 Walgreens’ policies across the country and thus the applicability of Walgreens’ MDL testimony to  
 3 this case – Walgreens wrote weeks ago that it “agree[d], in principle.” Plaintiff hopes this issue is  
 4 resolved but is concerned, based on written discovery responses Walgreens also served Friday night,  
 5 that Walgreens may try to renege on this agreement, too.

6 **c. Walgreens Should Be Ordered to Produce a Limited**  
 7 **Number of Documents Sufficient to Conduct**  
**Confirmatory Review of Its TAR-Training Seed Set**

8 As discussed at the last hearing, Plaintiff recently learned of a significant dispute that calls  
 9 into question the propriety of Walgreens’ technology assisted review (TAR) process – which is the  
 10 foundation of Walgreens’ (anemic) ESI productions. As Plaintiff understands it, in this case, as in  
 11 the rest of the litigation across the country, Walgreens engaged in a three-step ESI process. Step 1:  
 12 run the agreed-upon search terms on documents collected from the agreed-upon sources. Step 2: use  
 13 human reviewers to identify which documents are responsive. Step 3: use TAR – i.e., computers –  
 14 to identify responsive documents similar to those the humans determined were responsive. For Step  
 15 3 to work properly, Step 2 has to be done right – that is, the TAR program has to be properly trained.  
 16 If it is not, TAR can exclude a significant percentage of responsive documents. That is exactly what  
 17 a judge concluded had happened in the Florida Attorney General’s pending litigation against  
 18 Walgreens. Walgreens was ordered to produce 300 documents from the “seed set” used to train its  
 19 TAR program that Walgreens’ reviewers had marked as “unresponsive.” A review revealed that 57  
 20 of the 300 documents marked as unresponsive were, in fact, responsive, and many of them were  
 21 **highly relevant**. Florida argued that this significant miscoding, which was then baked into the TAR  
 22 algorithm, had excluded tens of thousands of relevant Walgreens documents. The Florida judge  
 23 agreed, and ordered Walgreens to disregard the TAR process and produce *all* documents that hit  
 24 plaintiff’s search terms (subject to a privilege review).

25 Plaintiff has every reason to believe that Walgreens employed a parallel process across the  
 26 country, including for this case. Plaintiff should therefore be allowed to probe the responsiveness  
 27 designations for a random sample from the seed set used to train the TAR program in San Francisco.



1 The burden of such a production is virtually non-existent, and if Walgreens’ properly coded its seed  
2 set, it should have nothing to hide.

3 **d. Walgreens Refuses to Complete Its Production of Code**  
4 **of Business Conduct Questionnaire Responses, Which**  
5 **Contain Pharmacist Complaints About Interference**  
6 **with Their Ability to Conduct Prescription Due**  
7 **Diligence**

8 Plaintiff identified Walgreens’ Code of Business Conduct questionnaire – and the relevance  
9 thereof – upon an initial review of APIS internal complaints that Walgreens, after months of  
10 resistance, produced at the end of October. The questionnaire asks pharmacists whether they are  
11 aware of unethical conduct. In response, pharmacists have identified interference with their ability  
12 to conduct prescription due diligence. Following the last status conference, the Court issued an order  
13 requiring Plaintiff and Walgreens to meet and confer to discuss “Walgreens’ efforts to locate  
14 responses to its Code of Business Conduct questionnaire and the documents that it expects to  
15 produce.” Doc. 725 at 2.

16 At the parties’ November 4 videoconference, Walgreens committed to producing responses  
17 to the questionnaire for all years available with one troubling limitation: *California only*. This  
18 limitation is inappropriate because, as the MDL court recognized in a similar context, “[w]hen any  
19 Pharmacy Defendant issues a national policy, it should expect feedback from its pharmacies.”  
20 Doc. 626-9 (*In re Nat’l Prescription Opiate Litig.*, MDL No. 17-md-2804-DAP (N.D. Ohio),  
21 Doc. 3689) at 3. “It does not matter which pharmacy the feedback comes from. The feedback is  
22 necessarily national in scope because it implicates the effectiveness of the national policy . . . an  
23 issue that is the very heart of this litigation.” *Id.* In a similar context, this Court rejected Walgreens’  
24 persistent plea to limit the geographic scope of its complaint productions, responding, “Nationwide.  
25 Nationwide. I already said it’s relevant nationwide.” Transcript of Proceedings by Zoom Webinar  
26 dated Oct. 19, 2021 at 34:18-19.

27 When Plaintiff raised concerns about the geographic scope, Walgreens’ counsel responded as  
28 follows: “We are not talking about nationwide, which means we are done with our meet and confer.”  
Since the videoconference, Walgreens has not answered any of Plaintiff’s questions, despite multiple  
follow-up emails. Nor has Walgreens confirmed that its limited production of California



questionnaire responses is complete. Respectfully, the time has come for Walgreens to come clean about pharmacist whistleblowers. Consistent with the Court's prior ruling regarding internal complaints, Walgreens should be ordered to produce Code of Business Conduct (or equivalent) questionnaire responses nationwide.

Additionally, it has come to Plaintiff's attention that at least one respondent to the Code of Business Conduct questionnaire filed a lawsuit alleging the pharmacist was terminated for refusing to fill controlled substance prescriptions. Walgreens settled the lawsuit. Information about these lawsuits and settlements is undoubtedly responsive to Plaintiff's pending discovery requests. Plaintiff has therefore requested that Walgreens produce a log of similar demand letters, filed complaints, and settlements, which the company surely maintains.

## **2. Endo/Par**

### **a. Endo's Continuing Productions**

Since the last Joint Status Conference, Endo/Par has produced nearly 18,000 additional documents from multiple sources, including a November 9, 2021, production of 12,751 Par compliance documents, consisting mainly of licensing and registration records.<sup>2</sup>

Furthermore, on Friday, November 12, 2021, Endo's counsel advised Plaintiff during a video conference that the following productions are *still forthcoming*: (1) up to 10,000 additional Par licensing documents to be produced by November 24; (2) up to 2,500 additional hard copy documents from custodial files expected to be produced November 16; (3) approximately 20,000 documents that do not hit on National/MDL search terms but previously tagged relevant or responsive at some point are being reviewed, and responsive, non-privileged documents will be produced by the end of November. This is in addition to volumes of documents in Endo's online "repository" of MDL documents that "hit" on agreed search terms but were not produced because Endo deemed them "non-responsive."

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<sup>2</sup> This compliance production is in addition to the more than 23,000 compliance documents (nearly 12,000 of which were hard copy) Endo produced in October. Plaintiff is evaluating how these productions, both of which should have been completed years ago in the MDL, may impact their previously served expert reports.

1 **b. Privilege Logs**

2 Since the last Joint Status Conference, Endo has produced thousands of privilege log entries,  
3 including approximately 1,300 additional privilege log entries late last week. Plaintiff is still  
4 awaiting privilege logs the majority of productions mentioned above.

5 **c. Letter Brief Regarding Endo's Supplemental**  
6 **Interrogatory Responses and Rule 30(b)(6) Testimony**

7 Endo's responses and supplemental responses to Plaintiff's Interrogatories, Set One and Set  
8 Two, seeking information regarding representations and publications disseminated in the San  
9 Francisco Bay Area, remain deficient despite extensive meet and confer efforts since April. The  
10 deficiencies include: (1) failure to identify materials Endo employees and agents distributed to health  
11 care professionals; (2) failure to identify documents and data reflecting journal abstracts, posters,  
12 presentations, and articles relating to opioids that Endo sponsored in connection with Schedule II  
13 opioid medications; (3) missing Call and Materials Dropped Data Files; and (4) information  
14 disseminated on various websites Endo used to promote opioids.

15 Endo served its final responses and supplemental responses on Friday evening,  
16 November 12, 2021. On Tuesday, November 16, 2021, Plaintiff provided Endo with its draft letter  
17 brief seeking additional responses and a deposition pursuant to Rule 30(b)(6) to fill persistent and  
18 unresolved gaps in Endo's responses. Plaintiff is awaiting Endo's response, including whether Endo  
19 is willing to provide further response and now agree to the requested deposition, and the parties will  
20 promptly file a joint letter brief on the outstanding issues.

21 **3. Allergan/Teva/Actavis**

22 On October 29, Plaintiff requested 30(b)(6) deposition testimony from the Teva/Actavis  
23 Defendants. Plaintiff and Teva/Actavis Defendants met and conferred on Wednesday, November  
24 10, 2021, Plaintiff narrowed its proposal by offering to remove two topics and allowing for written  
25 answers to others, should Teva agree. The parties met and conferred a second time on Monday,  
26 November 15, 2021 and Teva agreed to consider the proposal, but would not commit to providing a  
27 response until after a week's time.

1 Also on October 29, Plaintiff requested the depositions of four former Teva employees. Teva  
2 offered dates outside the discovery period, and these depositions are now scheduled through  
3 December 16, 2021.

4 Plaintiff has requested the depositions of three former sales representatives pertinent to  
5 Allergan. These depositions are also now scheduled outside the discovery period through December  
6 9, 2021.

7 **G. Other issues**

8 Below, Defendants discuss the three Rule 30(b)(6) depositions they seek regarding Plaintiff's  
9 pharmacy operations, which include a total of 39 noticed topics. Plaintiff agreed to produce a  
10 witness for San Francisco General Hospital's outpatient pharmacy. The parties are also in agreement  
11 as to the vast majority of the noticed topics for that deposition, and Plaintiff expects those  
12 negotiations will have concluded by the time of the hearing. As to the other two facilities (the jail  
13 and a skilled nursing facility), the parties are still negotiating, but Plaintiff notes that the burden of  
14 preparing the testimony far outweighs any conceivable relevance. Outpatient dispensing of  
15 prescription opioids from those facilities is very limited (*i.e.*, at release from custody or discharge)  
16 and in no way comparable to the operations of a retail pharmacy.

17 Walgreens also complains about document productions from Dr. Claire Horton, one of  
18 Plaintiff's many document custodians, who is a San Francisco Department of Public Health  
19 employee on leave from a joint appointment at UCSF. Dr. Horton had indicated that responsive  
20 documents might be found on her UCSF computer, in addition to sources in Plaintiff's control (*e.g.*,  
21 her SF DPH email account). Plaintiff encouraged UCSF to collect and produce these documents—  
22 which are outside of Plaintiff's custody and control—and UCSF agreed to do so. Plaintiff  
23 understands that that production is complete. On November 15, Walgreens requested that UCSF  
24 also search Dr. Horton's UCSF email account.

25 Finally, the parties appear to have a minor disagreement about the scope of the Court's order  
26 on deposition limits. That dispute, however, is unlikely to materialize in any meaningful way  
27 because, even under the most conservative view, Plaintiff is under the deposition limit and will  
28 exceed the hour limit by only a few hours, if at all. *See* Transcript of Proceedings by Zoom Webinar

dated Jan. 28, 2021 at 27:15-18 (The Court: “[I]f in the end it turns out you really need another deposition and the other side won't give you that even though you've hit your limit, you come back to the Court and if you need it, you'll get it.”).

### III. DEFENDANTS’ STATEMENT

#### Status of Party Discovery

##### A. Defendants’ Discovery Requests

##### Newly Added Custodians

As Defendants have previously explained, Plaintiff identified two critical, additional custodians well after the substantial completion deadline. Since then, Defendants received belated, facially-inadequate document productions.

On August 27, 2021, Plaintiff identified Kathleen Chung, an Opioid Safety Subject Matter Expert with San Francisco’s Department of Public Health, in the People’s Fourth Supplemental Responses and Objections to Distributor Defendants’ First Set of Interrogatories. And on August 30, 2021, Plaintiff produced SF-Opioids\_VOL00047, stating that it included 258 “documents from the custodial production of Dr. Claire Horton<sup>3</sup> and Dr. Kathleen Chung.” This was the first time Plaintiff disclosed Drs. Horton<sup>4</sup> and Chung as custodians.

On October 14, Plaintiff indicated it would agree to Dr. Horton’s deposition being two weeks after Defendants receive her custodial production from UCSF. Defendants accepted Plaintiff’s offer and agreed to take Dr. Horton’s deposition two weeks after receiving her final custodial production.

On November 5, UCSF produced a PDF of “the requested Horton documents.”<sup>5</sup> Defendants followed up with several questions, as the production included only one PDF (itself just 331 pages long) and included zero emails, for example. Defendants asked these clarifying questions three separate times, and on November 16, UCSF’s counsel wrote back, refusing to run search terms over Dr. Horton’s email. On November 8, Plaintiff’s counsel wrote to Defendants, “[t]he place not within

<sup>3</sup> Plaintiff refused to add Dr. Horton as a custodian in February. This is an especially important point given the ongoing delay in the production of Dr. Horton’s UCSF custodial files, discussed below.

<sup>4</sup> Dr. Horton is San Francisco Department of Public Health’s Chief Medical Officer.

<sup>5</sup> The production included inadvertent errors, and UCSF reproduced it on November 8.

1 Plaintiff's control that Dr. Horton identified as potentially containing responsive documents was  
 2 limited to her UCSF computer files, not UCSF email—and that is what Plaintiff conveyed to  
 3 UCSF.” UCSF's counsel also informed Defendants that Dr. Horton conducted a self-search.  
 4 Defendants respectfully request that this Court order Plaintiff to facilitate a further production that  
 5 includes Dr. Horton's UCSF emails, as Plaintiff's instructions and Dr. Horton's self-search were  
 6 insufficient.

7 **1. Upcoming Depositions and 30(b)(6) Testimony**

8 Defendants requested the depositions of Dr. Grant Colfax, Sheriff Paul Miyamoto and  
 9 Supervisor Matt Haney. Following the Court's order at the October 19 discovery conference for  
 10 Plaintiff to meet-and-confer regarding 30(b)(6) depositions, the parties discussed this issue.  
 11 Walgreens has since offered to accept 30(b)(6) testimony in lieu of depositions of Sheriff Miyamoto  
 12 and Dr. Colfax. Endo likewise offered to accept 30(b)(6) testimony in lieu of testimony from  
 13 Supervisor Haney. The Parties further met and conferred on October 25 concerning the topics and  
 14 scope of Defendants other 30(b)(6) testimony, and whether any information can be provided in  
 15 sworn statements in lieu of depositions. Allergan is willing to accept sworn statements for certain  
 16 topics, and limit the scope of others, which they shared with Plaintiff on November 1. They and  
 17 other Defendants met and conferred with Plaintiff on November 2, and Plaintiff has not yet provided  
 18 its position on these proposals.

19 Defendants also served 30(b)(6) notices on the three pharmacies Plaintiff operates  
 20 (Zuckerberg, Laguna Honda, and the Jail). As a result of a subsequent meet and confer, Defendants  
 21 cut seven topics in each notice. Plaintiff offered to put up a witness for Zuckerberg on just two of  
 22 the remaining 13 topics and, with caveats, agreed to answer the others in writing, but did not agree to  
 23 provide any witness at all for Laguna Honda or the Jail pharmacy. Defendants subsequently offered  
 24 to accept just four topics for oral testimony from Laguna Honda and the Jail, as well as the six topics  
 25 requested from Zuckerberg. Defendants offered to accept written answers for the remaining topics.  
 26 Defendants believe their notices are entirely appropriate because they go to Plaintiff's own pharmacy  
 27 operations—to the extent Plaintiff intends to put Walgreens' pharmacy practices at issue, its own  
 28

1 practices are relevant—and Defendants respectfully request that this Court order Plaintiff to produce  
2 30(b)(6) witnesses from all three of its pharmacies on a mutually agreeable date.

### 3 **2. Notice of Rule 30(b)(6) Deposition to the People of the State of** 4 **California**

5 Defendants noticed a Rule 30(b)(6) deposition of the only plaintiff in this case, the People of  
6 the State of California. In meeting and conferring regarding the notice, the People stated that they  
7 would not provide any live testimony on any of the noticed topics. Defendants therefore submitted a  
8 three-page dispute letter seeking to compel testimony on centrally relevant topics. Plaintiff has not  
9 yet provided its response. As discussed in the dispute letter, the People’s claim that their expert  
10 reports and interrogatory responses contain information responsive to some of the deposition topics  
11 is largely untrue and would not immunize the People from complying with the deposition notice in  
12 any event.

### 13 **3. Deficiencies in Plaintiff’s Current Production**

14 Regarding the temporal deficiencies in Plaintiff’s document productions and the ongoing  
15 meet and confer discussions related to Plaintiff’s migration of email from various platforms (e.g.,  
16 Lotus Notes and MS Exchange) to Office 365, the parties met and conferred on Friday, November  
17 12, 2021. Counsel for Plaintiff indicated that they would consult with their client regarding the  
18 questions discussed during this session. The parties have another meet and confer scheduled for  
19 Thursday, November 18, 2021.

### 20 **4. The Manufacturer Defendants’ Interrogatories**

21 The parties met and conferred on November 1, 2021, regarding numerous deficiencies in  
22 Plaintiff’s responses to Manufacturer Defendants’ Second and Third Sets of Interrogatories. Plaintiff  
23 agreed to supplement two responses (Interrogatory Nos. 17 and 18) but refused to commit to  
24 supplement any others (including Interrogatory Nos. 26, 27, 31, 33, 34, 35, 37, and 41). In the  
25 responses they refused to agree to supplement, the People failed to provide basic discoverable  
26 information, such as: what specific acts each Defendant allegedly committed to violate the FAL and  
27 UCL (Nos. 26 & 27); when the People first became aware of the facts giving rise to their causes of  
28

1 action (No. 33); and the first communication by each Defendant that allegedly contributed to the  
2 public nuisance or was misleading (Nos. 34 & 35). Plaintiff's refusal to provide such fundamental  
3 information prejudices Defendants' ability to prepare this case for trial. On November 9, 2021,  
4 Manufacturer Defendants therefore served its three-page dispute letter to compel further responses to  
5 Interrogatory Nos. 26, 27, 31, 33, 34, 35, 37, and 41.  
6

7 On November 11, 2021, Plaintiff served supplemental responses, including to those they  
8 would not commit to supplement: Interrogatory Nos. 26, 27, 31, 33, 34, 35, 37, and 41. The next  
9 day, Plaintiff also informed Manufacturer Defendants that it believes the dispute letter is now  
10 "moot," and Plaintiff failed to provide any substantive response. Unfortunately, Plaintiff's  
11 supplemental responses resolve none of the deficiencies identified in Manufacturer Defendants'  
12 dispute letter. Troublingly, the supplemental responses do not even appear to have been designed to  
13 resolve those deficiencies. Multiple of the supplemental responses are simply non-responsive.  
14 Manufacturer Defendants are concerned that Plaintiff's supplemental responses were designed in  
15 large part to delay resolution of Manufacturer Defendants' dispute letter. Such delay will continue to  
16 prejudice Defendants. Defendants have demanded that Plaintiff make itself available to meet and  
17 confer on these issues immediately including to discuss an accelerated briefing schedule. Defendants  
18 requests that the Court adopt an accelerated briefing schedule so that the parties to resolve the  
19 dispute about these interrogatory responses promptly.  
20  
21

22 On November 12, 2021, Plaintiff served responses and objections to Manufacturer  
23 Defendants' Fourth Set of Interrogatories. Manufacturer Defendants wrote Plaintiff on November  
24 15, 2021, to identify numerous deficiencies in those responses and objections and asking Plaintiff to  
25 meet and confer promptly.  
26  
27  
28



1           **B.       Plaintiff's Discovery Requests**

2           Defendants have produced millions of documents in the MDL, which are deemed produced  
3 in this case, and major additional productions specific to this case.

4           **Walgreens** has complied with all the Court's instructions and requests at the last conference.  
5 On October 20, Walgreens provided Plaintiff a list of all predicate categories of incident reports. The  
6 same day, Plaintiff provided a list of all predicate categories for which it wanted summaries of  
7 incident reports produced on a nationwide basis. Within 5 business days, on October 27, Walgreens  
8 produced the summary spreadsheet to Plaintiff. Walgreens reserved all rights related to the  
9 production and anticipates the need to claw back PHI and any privileged information included in the  
10 spreadsheet, as the Court permitted at the October 19 status conference.

11           Plaintiff subsequently asked Walgreens to produce the full APIS files, as well as any related  
12 Salesforce documents, from four separate tranches of incidents. Walgreens received Plaintiff's last  
13 request on Friday, November 12, and is working to produce those documents quickly. It has  
14 produced all available APIS and Salesforce documents for Plaintiff's first three tranches of requests.

15           On November 3, 2021, Walgreens proposed dates for its 30(b)(6) witness and the deposition  
16 of Joe Ferry. The 30(b)(6) date is confirmed, and the parties are working to find a date for Mr.  
17 Ferry's deposition convenient to other Plaintiffs who are also seeking his testimony.

18           On November 5, Walgreens produced the remaining education and training materials, along  
19 with a log of who attended those trainings. On November 5, Walgreens also explained in writing the  
20 process that it took to search for potentially responsive documents. Plaintiff has not made any  
21 follow up requests.

22           On November 9, Walgreens completed the production of its Storewalk materials.

23           Plaintiff now makes four new complaints about Walgreens. Each is meritless.

24           **1.       Plaintiff's Request for Inspection**

25           On May 21, Plaintiff served a request to inspect Walgreens' electronic dispensing system.  
26 The parties met and conferred. In early August, Walgreens identified testimony and documents,  
27 providing specific bates numbers, that provided what Plaintiff purported to seek—precisely how the  
28 system's pieces fit together, how pharmacists pull a patient's prescription history, etc. On October

29, Plaintiff renewed its demand, citing “arguments Walgreens made at the CT3 trial.” Walgreens asked for page/line citations to what Plaintiff was talking about in order to evaluate its request. Plaintiff refused to provide them. Walgreens explained that even though Plaintiff ignored Walgreens’ questions and revived a dormant issue at the end of discovery, it would consider Plaintiff’s request.

## **2. Plaintiff’s Accusation that Walgreens Is Reneging on Its Rule 30(b)(6) Commitments**

Plaintiff alleges Walgreens “is reneging” on its Rule 30(b)(6) commitments. That is simply untrue. Walgreens committed to provide a witness on five topics, and Walgreens stands by that commitment. Walgreens also asked Plaintiff to (i) provide clarification Plaintiff committed to provide (but had not yet provided) on one topic, and (ii) confirm that Plaintiff was interpreting other topics in a reasonable way so that Walgreens can reasonably prepare a witness. Plaintiff’s response confirmed that Plaintiff does not plan to interpret the requests in a reasonable way at all. Instead, Plaintiff has made clear that it will insist on a scope that bears no relation to this case or to testimony that any natural person could provide. If Plaintiff does not agree to a reasonable scope, Walgreens will move for a protective order in advance of the deposition.

## **3. Walgreens’ TAR-Training Seed Set**

Walgreens set forth its position on TAR in the last status conference. Plaintiff did not follow up with Walgreens after that status conference with any further requests. Instead now, after the close of fact discovery, Plaintiff requests to see sample non-responsive documents, likely with the goal of re-opening Walgreens’ production.

This request is meritless. Walgreens has been transparent about its use of TAR since the beginning of the MDL, several years ago. As Walgreens confirmed, while no review is perfect, our use of TAR ensures that Plaintiff receives more relevant documents, with fewer false positives, than an average manual review. Plaintiffs also had the full opportunity to explore Walgreens’ document collection in a 30(b)(6) deposition taken at the very beginning of the MDL.

Walgreens has also been transparent about its responsiveness standards throughout the MDL. We have search term hit counts and provided sample non-responsive documents to Special Master

1 Cohen for in camera review. All of those issues have been resolved, and Special Master Cohen  
2 largely agreed with our positions.

3 In the course of the Florida litigation, Walgreens also had to produce non-responsive  
4 documents for in camera review. The documents at issue primarily comprised daily news reports  
5 and weekly government relations reports. The Judge in the Florida litigation disagreed with certain  
6 of Walgreens' responsiveness calls – not our use of the TAR process – as it related to these and  
7 similar documents.

8 Walgreens does not agree that the conclusion of the Florida court was correct. Nevertheless,  
9 the production of documents subject to that order is nearly complete. Walgreens ensured that all  
10 documents produced in Florida (including those shipped on hard drives) were re-produced via DR 22  
11 and accessible to San Francisco Plaintiff. The Florida AG briefing regarding Walgreens' production  
12 was public in August. This issue is resolved. There is no justification now, after the close of fact  
13 discovery, to re-open this issue. If Plaintiff seeks that dramatic relief, we request they serve a three  
14 pager so Walgreens can ensure they fully understand the issue and we can also confirm whether  
15 Plaintiff is willing to provide the same sample non-responsive set for its own document production.

16 **4. Walgreens' Code of Business Conduct Questionnaire**  
17 **Responses**

18 Plaintiff has been aware of Walgreens' Code of Business Conduct Questionnaires since  
19 Sherry Malusa's deposition, which occurred in March 2021. Plaintiff belatedly demanded the  
20 production of these documents. On November 4, in accordance with this Court's order, Plaintiff and  
21 Walgreens met and conferred by video conference to discuss Walgreens' efforts to locate responses  
22 to its Code of Business Conduct questionnaire and the documents that it expects to produce.  
23 Walgreens not only complied with the Court order to meet and confer, but also expedited production  
24 of these documents for California and produced those to Plaintiff November 9. Walgreens has  
25 satisfied its obligations, produced these documents, and now after the close of fact discovery,  
26 Plaintiff demands more and more. Respectfully, Plaintiff's nationwide fishing expeditions, and its  
27 demands for nationwide search and production of these documents, are unreasonable.  
28

1 On the morning of November 16, just before the second exchange of status report drafts,  
 2 Plaintiff informed Walgreens it became aware of a lawsuit against Walgreens from one respondent  
 3 to the Code of Business Conduct questionnaire. Walgreens responded, asking for the name of the  
 4 pharmacist in question and the documents Plaintiff relied on for that assertion, and Walgreens will  
 5 look into this brand new request.

6 The **Endo** and **Par** Defendants have been working diligently to expedite completion of  
 7 privilege logs. During the week of November 1, 2021, Endo produced three privilege logs, as well as  
 8 certain documents it determined should be produced in full or in part. Due to a vendor error, one  
 9 Endo log inadvertently excluded approximately 1,170 documents. Endo produced a log reflecting  
 10 these documents on November 12, 2021, well as certain additional documents it determined should  
 11 be produced in full or in part. Also on November 12, 2021, Endo made a small supplemental  
 12 production of documents and supplemented its responses to certain of Plaintiff's interrogatories.<sup>6</sup>

13 On November 2, 2021, Plaintiff served a Notice of Rule 30(b)(6) Deposition ("Notice") on  
 14 Endo, seeking testimony on 16 broad topics, including the "identity, including by Bates number" of  
 15 "all" documents in certain categories. Many of the topics are cumulative and duplicative of prior  
 16 company witness testimony given by Endo in other opioid cases (transcripts of which were produced  
 17 to Plaintiff), as well as information in Endo's responses to Plaintiff's interrogatories. Likewise, the  
 18 overbroad scope of the noticed topics is not proportional to the needs of this case. Endo objected to  
 19 the Notice in its entirety on these and other grounds. The parties continue to meet and confer  
 20 regarding this Notice.

21 On November 11, 2021, Endo and Par advised Plaintiff during a meet and confer that they  
 22 recently determined that certain categories of documents in their document review databases should  
 23 be reviewed for potential production into the MDL. Endo and Par expect to make productions of

---

24  
 25 <sup>6</sup> On November 12, Endo produced into the MDL approximately 2,600 documents that were  
 26 determined to be responsive following a re-review to resolve coding conflicts; approximately 140 of  
 27 these hit on search terms agreed upon in this action. Additionally, on November 15, Endo produced  
 28 several updated spreadsheets reflecting (1) supplemental information regarding SAP HCP spending  
 data already produced, as well as certain additional rows of spending data and (2) supplemental  
 information regarding HCP invoice data already produced, as well as additional invoice data relating  
 to payment data already produced.

1 responsive documents on a rolling basis over the next few weeks, to be completed by November 30,  
2 2021. Endo and Par will promptly notify Plaintiff if they determine that any further supplementation  
3 of productions is necessary.<sup>7</sup>

4 Finally, as previously reported, Endo and Par established document repositories where opioid  
5 plaintiffs can view non-privileged documents from matter-specific custodians that hit on National  
6 Search Terms that were reviewed in the MDL or state or federal civil litigations, but were not  
7 produced because they were coded non-responsive. These repositories were made available to  
8 plaintiffs on November 4, 2021.

9 **C. Plaintiff's Request for Admissibility and Authentication Stipulations**

10 During the meet-and-confer on this topic, Plaintiff made a very broad proposal that seemed to  
11 ask Defendants to stipulate to a huge universe of documents as both authentic and admissible as  
12 business records. Plaintiff provided a revised proposal in writing on October 29, 2021. To better  
13 understand and consider Plaintiff's proposal, which remains very broad, Defendants wrote back on  
14 November 12, 2021, with a series of questions. Defendants remain willing to continue to meet and  
15 confer on this topic, but Defendants continue to believe that any such discussion will be more  
16 focused and productive once the parties identify exhibits for trial.

17 **D. Status of Other Third-Party Discovery**

18 Following up on the production of CURES data from the California Department of Justice  
19 ("CA DOJ"), DOJ recently identified Plaintiff's prescribers in the CURES data. Walgreens  
20 submitted a manageable list to DOJ, containing a few dozen additional non-plaintiff prescribers. In  
21 accordance with the governing statute, Walgreens personally served these prescribers and informed  
22 them that it intends to re-identify them by name, asking that the prescribers provide any objections  
23 by November 22. Walgreens also asked that DOJ prepare to produce the data for any providers who  
24 do not object on November 23. DOJ has not responded. These notices include a small number of  
25 Plaintiff's prescribers, who Plaintiff itself identified in its interrogatory responses as having been  
26 investigated for patient deaths related to prescription opioids. Nevertheless, Plaintiff objected to

27 <sup>7</sup> Endo's and Par's productions in other opioid matters will continue after the close of fact discovery  
28 in this case.

Walgreens' notices of its prescribers, and demanded that Walgreens withdraw its notice. Walgreens' request is entirely appropriate and the information is critical to Walgreens' defense in this case.

DATED: November 16 2021

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26 <sup>8</sup> Defendant Allergan Finance, LLC was formerly known as Actavis, Inc., which was formerly  
 27 known as Watson Pharmaceuticals, Inc. Defendant Allergan plc, which was formerly known as  
 28 Actavis plc and is now known as Allergan Limited, does not waive but rather expressly preserves its  
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**ATTESTATION**

Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from the above signatories.

Dated: November 16, 2021

By: *Aelish M. Baig*

**CERTIFICATE OF SERVICE**

I hereby certify that, on November 16, 2021, service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the ECF system.

s/ Aelish M. Baig  
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## Mailing Information for a Case 3:18-cv-07591-CRB City and County of San Francisco et al v. Purdue Pharma L.P. et al

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